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November 1, 1996

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CS Docket No. 95178
Definition of Markets

Ladies and Gentlemen:

In comments filed in the above referenced Docket on October 31, 1996, Southern Broadcast Corporation of Sarasota requested that the attached "Comments of Southern Broadcast Corporation of Sarasota" be incorporated by reference. For ease of reference, I am submitting seven copies of this document for inclusion in CS Docket No. 95-178.

Sincerely yours,

Joseph A. Belisle
Counsel for Southern Broadcast
Corporation of Sarasota

JAB/lhq

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
AMENDMENT OF PARTS 73 AND 76	)	GEN. Docket No. 87-24
OF THE COMMISSION'S RULES	)	
RELATING TO PROGRAM EXCLUSIVITY IN	)	
THE CABLE AND BROADCAST INDUSTRIES	)	

To: The Commission

Comments of Southern Broadcast Corporation of Sarasota

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July 21, 1987

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COMMENTS

1. Southern Broadcast Corporation of Sarasota ("SBC"), licensee of WWSB Television, Sarasota, Florida, hereby submits its comments in response to the Notice of Inquiry and Notice of Proposed Rule Making, FCC 87-65, released April 23, 1987 (hereinafter "Notice") in this proceeding. These comments are limited to opposing the Notice's proposal to eliminate or modify the restrictions on territorial exclusivity in non-network programming arrangements contained in Rule 73.658(m) (the "35 Mile Rule").

2. The Notice instituting this proceeding has the laudable objective of perfecting the market forces governing production, distribution and exhibition of video programming. The Notice seeks "to achieve diversity by ensuring, to the extent possible: (1) that its regulations foster a level playing field among the various competitors, including those who produce and those who distribute; and (2) that freedom of contract, and thus private property rights, are unimpeded by the Commission's regulation or deregulation of the industries." To this end, the Notice proposes to reregulate program exclusivity arrangements affecting competition between CATV and broadcast television by reexamining the Syndicated Program Exclusivity and Network Non-Duplication Rules.

3. Almost as an afterthought, the Notice proposes to deregulate program exclusivity arrangements affecting competition among television broadcast stations, inter se, by

eliminating the 35 Mile Rule. This proposal is a serious mistake. Although the 35 Mile Rule does regulate program exclusivity, neither its purpose nor its effect is to adversely affect free competition or private property rights.

I. THE FACTUAL AND CONCEPTUAL PREMISES FOR THE RULEMAKING ARE INVALID

4. The Notice runs afoul of its search for a level playing field among competitors when it speculates that the 35 Mile Rule may adversely affect the incentives parties have to create programming and distribute it via the medium of commercial television. Indeed, almost every factual or conceptual predicate that the Notice relies upon in questioning the continuing validity of the 35 Mile Rule is either non-existent or of doubtful validity.

A. THE JUSTIFICATION FOR THE PROPOSED SYNDEX AND NON-DUPLICATION RULE CHANGES DOES NOT APPLY TO THE 35 MILE RULE

5. The Commission has proposed overhaul of its program distribution rules as part of its continuing effort to deregulate the nation's communications industries. Two of the rules under review are the Syndicated Exclusivity Rule ("Syndex") and the Network Non-Duplication Rule, which set the terms of competition between broadcasters and other media. The Notice proposes to change these rules, expanding the rights of broadcast stations to bargain with program suppliers for exclusivity against CATV for video programming, both network and syndication, within individual geographic markets.

6. The _Notice_ would treat the 35 Mile Rule similarly, on the assumption that its elimination will foster of a more level playing field in the television broadcasting market. The _Notice_ blindly assumes that what is pro-competitive and efficient in one area must also be beneficial in the other.

7. This assumption does not follow because the relevant markets are very different. The Syndex and Non-Duplication Rules deal exclusively with competition between regulated and relatively unregulated entities: television stations vs. CATV systems. Under the current rules, non-regulated exhibitors, such as cable TV and home video suppliers, have no regulatory restraints on their ability to contract with program suppliers for program exclusivity with respect to broadcast television stations. Additionally, CATV systems enjoy a compulsory copyright license, enabling them to broadcast programs at prices that are not set by free market negotiations. Television broadcasters, on the other hand, compete in a highly regulated industry and must negotiate on the open market for all programs exhibited over their stations.

8. The Commission has expended much effort considering the Syndex and Network Non-Duplication Rules, and has concluded that strengthening broadcasters' ability to negotiate exclusivity provisions will enhance competition among the various exhibitors of video programming. Thus the _Notice_'s proposal to reinstitute the Syndex Rule is properly viewed as

levelling the playing field between TV and CATV. The same holds true for the Non-Duplication Rule.

9. The competition that is relevant to both the Syndex and Non-Duplication Rules is not that competition existing among exhibitors as exhibitors, but that existing among exhibitors as buyers bidding for programming. CATV's ability to purchase exclusivity rights in this market is wholly unregulated and, to the extent that repeal of the Syndex Rule has limited television broadcasters' options as buyers, television broadcasters are at a distinct disadvantage. Adoption of the proposed Syndex and Non-Duplication Rules will remove impediments from the regulated market, enabling it to compete more effectively against an unregulated market.

10. In the case of the 35 Mile Rule, however, the competitive situation most directly affected is not between regulated and unregulated entities[1]. Instead it is between entities engaged in the same enterprise, governed by identical regulations, but with wide variations in competitive position due in large measure to the Commission's allocation decisions.

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[1]Perhaps the single greatest misconception employed to support the Notice's fantastic speculation on the 35 Mile Rule's utility is the observation that the video distribution market in 1987 includes new communications services such as video cassettes and multichannel multipoint distribution services, and that these alternative services are somehow concerned with the 35 Mile Rule. Notice at 65. These new services have absolutely nothing to do with competition among television broadcasters. Since the 35 Mile Rule acts solely to regulate competition among television broadcasters, inter se, the presence or absence of new video services has absolutely nothing to do with the 35 Mile Rule.

Unfortunately, the Notice fails to take into account the unique technical, regulatory and economic characteristics of the relevant market, television broadcasting. (See paras. 15 - 21, below.) Its proposal for the 35 Mile Rule would not level the playing field at all; it would in fact accentuate the bumps and hollows already there. The present 35 Mile Rule has some very important field-levelling effects, and should be retained[2].

B. NO INDEPENDENT STUDY EXISTS SUPPORTING THE NOTICE'S PROPOSAL TO REPEAL THE 35 MILE RULE

11. The Notice states, "In response to several waiver requests, we have conducted an independent analysis of this rule and have tentatively concluded that the limitations it imposes may constitute an unnecessary intrusion into contractual arrangements between private parties and may operate in such a way as to be inconsistent with the interests of the viewing public." Notice at para. 56. However, in a Freedom of Information Act ("FOIA") request filed May 18, 1987, SBC requested access to "any economic study or analysis prepared by or on behalf of the Commission or its staff addressing any of the Notice's concerns with respect to... relaxing or eliminating the restrictions contained in Rule

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[2]A complete analysis of the significant public interest distinctions between the Syndex and Network Non-Duplication Rules, on one hand, and the 35 Mile Rule on the other is contained in the "Statement of Dr. William O. Kerr Regarding Amendment of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries," appended hereto as Exhibit 1.

73.658(m)." No analysis of the 35 Mile Rule was identified or produced in response to SBC's request. Apparently the analysis that caused the Notice to question the utility of the 35 Mile Rule simply does not exist.

C. THE NOTICE'S SPECULATION CONCERNING GROWTH AND PROFITABILITY OF UHF TELEVISION DOES NOT SUPPORT REPEAL OF THE 35 MILE RULE

12. The Notice cites the growth in the number of UHF television stations between 1968 and 1986 as evidence of the improved ability of UHF stations to negotiate for programming. Notice at para. 64. There is little doubt that major market UHF stations are able to compete with major market VHF stations for programming, despite the UHF handicaps they experience[3]. These UHF stations are located in major population centers, and their average ability to serve areas within twenty to thirty miles of their transmitter sites is similar to the ability of the average VHF station. See Exhibit 2, Attachment A.

13. However, this is generally not the case for UHF stations located in overshadowed markets[4]. Overshadowed UHF stations are not located sufficiently near major population centers to obtain population coverage competitive with major

[3] A comprehensive "Survey of Factors Affecting Television Competition" is appended hereto as Exhibit 2. A discussion of the technical aspects of the UHF handicap begins at page 4 of that Exhibit.

[4] In some areas, large VHF stations in major markets are able to "overshadow" UHF stations in smaller, neighboring markets; that is, they broadcast into all or a part of the neighboring station's service area.

market stations. See Exhibit 2, p. 9. In those unusual instances where UHF stations have become viable in overshadowed markets, it is because the 35 Mile Rule has allowed them to obtain the attractive programs necessary for survival. Repeal of the Rule would have a disastrous impact on overshadowed UHF stations.

14. The Notice further finds that the general profitability of UHF stations has improved from an average pre-tax loss of $35,000 in 1974 to an average pre-tax profit of $132,000 in 1985. Notice at para. 64. The data used to support this proposition are woefully incomplete, however. The Notice indicates that there were 592 UHF stations on the air in 1986. However, the 1985 financial data the Notice relied upon covers only 203 UHF stations. What about the profitability of the other two-thirds of operating UHF broadcasters? Indeed, what about the profitability prospects for the large number of authorized but non-operating UHF stations?[5] Moreover, since the 1985 data was collected solely from members of the National Association of Broadcasters, it may be biased towards more profitable stations generating funds sufficient to support participation in broadcast association activities.

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[5]In this connection, SBC notes that the Commission's March 23, 1987 report on Television Channel Utilization indicated that there were 618 licensed UHF stations and 329 unlicensed UHF construction permits, as of December 31, 1986. If only 592 of these 947 authorized stations were operating in 1986, what accounts for the non-operating status of the other 355 authorized UHF stations? Is it the increased viability of UHF television that keeps more than one-third of all authorized UHF stations off the air? Hardly.

II. THE TELEVISION MARKETPLACE IS DISTORTED BY THE LAWS OF PHYSICS AND GOVERNMENT REGULATION

15. The Commission must recognize the distinct disparities among the television stations competing for access to programming. Despite its wishes otherwise, the technological and regulatory infrastructures of television broadcasting are actually more important than market forces in determining the level and type of competition that exists in the industry.

A. THE LAWS OF PHYSICS HANDICAP UHF BROADCASTERS

16. The *Notice*'s tentative conclusion on the efficiency of market forces is rendered fallacious by overwhelming competitive advantages major market VHF stations enjoy over UHF stations operating in overshadowed markets. In large measure the competitive advantage is due to the physical characteristics of UHF and VHF broadcasting. UHF television suffers from difficulty in both signal propagation and reception. With respect to propagation, UHF stations suffer greater attenuation due to shadowing, poorer building penetration, and greater signal fading due to atmospheric disturbances than VHF stations, not to mention greater capital and operating costs[6]. As for reception, UHF stations are more difficult to receive in part due to less efficient antennas on

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[6]In response to the physical limitations, UHF stations are authorized to operate at higher power, which results in higher electrical usage.

television sets, and they suffer from higher receiver noise levels than do VHF stations. The combined propagation and reception problems result in smaller coverage areas and in increased operating costs. See Exhibit 2.

17. The competitive superiority of VHF stations is demonstrated by the fact that the area within which the average VHF station can be received by an outdoor receive antenna is three times the outdoor reception area of the average UHF station. See Exhibit 2, Attachment A, p.3. Moreover, the typical overshadowed UHF station provides reception via indoor receive antennas to somewhere in the order of six percent of the population receiving indoor reception of an overshadowing market's VHF stations. See Exhibit 2, p. 9. Thus, the Notice's proposal should be viewed as a blueprint for large market VHF stations to exploit their superior location and technical facilities at the expense of small market UHF stations. This exploitation will inevitably degrade the service overshadowed UHF stations render small markets they serve[7].

B. SECTION 307(b) OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, FURTHER DISTORTS TELEVISION STATION COMPETITION

18. The marketplace does not dictate the location and power of television stations; the FCC does. These locations

[7]For an in-depth discussion of the negative effects of repeal of the 35 Mile Rule, see the statement of Dr. William O. Kerr appended hereto as Exhibit 1.

are in part dependent on interference criteria, but they are also affected by Section 307(b) of the Communications Act of 1934, as amended, which states:

> In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same the Commission shall make such distribution of licenses, frequencies, hours of operation and of power <u>among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same</u> [emphasis added].

19. The purpose of this statute is to prevent the marketplace from allocating radio service without regard to public need. In the early days of radio, licenses were issued upon request, and licensees grouped their stations in the vicinity of major population centers. This left the remainder of the country without local broadcast outlets. Section 307(b) was designed to remedy this problem, by ensuring that rural and suburban areas received their own radio and television service.

20. As a direct consequence of Section 307(b) and the related Television Table of Allotments, 47 C.F.R. § 73.606, the locations of television stations are not determined solely by economic market forces. The result, in part, is typified by overshadowed stations serving smaller towns and communities on the outskirts of major metropolitan areas. Moreover, generally speaking the major markets are served by VHF stations, while the smaller towns and communities are served by UHF stations.

21. Thus when the <u>Notice</u> postulates that there is not "any possible market failure which requires our continued

intervention into the contractual arrangements between programmers and producers pursuant to this rule," Notice at para. 61, it completely ignores the market distortions codified in Section 307(b) of the Communications Act, the barriers to entry embodied in the Television Table of Allotments, and the severe competitive disparities existing between UHF and VHF television broadcasters.[8]

III. ELIMINATION OF THE 35 MILE RULE WOULD CAUSE SIGNIFICANT NEGATIVE RESULTS

22. While recognizing the negative consequences which led to imposition of the 35 Mile Rule, the Notice assumes that deregulation will result in only minimal negative effects to the public, to overshadowed stations, and to communities served by those stations. In particular, the Notice presumes that economic factors will prevent the purchase of exclusivity by overshadowing stations where significant audiences would lose access to programming. When exclusivity is purchased,

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[8] SBC submits that even a cursory review of the Commission's own literature concerning the history of television competition and the UHF handicap shows that the Notice's "no possible market failure" theory of television competition is wholly without foundation either in fact or law. See, e.g., "The Historical Evolution of the Commercial Network Broadcast System," New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Volume II, Federal Communications Commission (1980); Comparability for UHF Television, Federal Communications Commission (1979); and A Survey of Consumer Attitudes and Experience Regarding UHF Television, Federal Communications Commission (1980). Indeed the tilted playing field that exists in television competition today is largely the result of decisions made by Congress, the Commission and equipment manufacturers decades ago. A discussion of the factors preventing free and equal competition in the television marketplace is appended hereto as Exhibit 2.

moreover, the _Notice_ assumes that the excluded stations will not suffer because of the abundance of equivalent programming. Finally, the _Notice_ assumes that if undesirable results occur with removal of the rule, the affected parties would have recourse to the antitrust laws as a remedy.

23. The _Notice_'s assumptions are simply too optimistic. Indeed, negative effects are likely if the rule were eliminated. Market forces are not strong enough in the relevant markets and the antitrust laws are not appropriate remedies for many of the problems that would be caused by removal of the rule.

24. As demonstrated above, the television broadcast market is not a competitive one. Indeed, the Department of Justice Vertical Restraints Guidelines recognize that

> Industries that have entry or rates regulated (such as...communications...) may be subject to competitive distortions that alter the normal economic effects of various business practices, including vertical restraints.

In these markets the competitive forces simply will not work in place of a regulatory limitation to protect the public interest.

25. The Commission has not conducted the research necessary to determine the extent of the potential problem, nor has it examined markets around the country to determine how many viewers are served by potentially overshadowed stations, nor has it identified the number of such stations that will be at risk. Before the Commission undertakes to modify the

current 35 Mile Rule, studies should be done that will answer these crucial questions about the potential negative effects of market failure in the television broadcasting industry[9].

A. THE NOTICE INCORRECTLY INSISTS THAT ALTERNATIVE PROGRAMMING WILL BE AVAILABLE TO OVERSHADOWED STATIONS

26. The Notice also states (at para. 66) that there is now a substantial amount of quality programming available, and that "In view of this fact it seems highly unlikely that the occasional inability of some stations to obtain specific programs would prevent those stations from obtaining good alternative programming and furnishing service to the public." The Notice does not appear, however, to have done any more than count the number of titles available today in syndication when evaluating this complex market. Such a superficial analysis is patently inadequate to evaluate whether a sufficient supply of viable alternative programming is available to protect overshadowed stations.

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[9]Indeed, had the Notice actually been premised on an analysis of 35 Mile Rule waiver requests, as it claims to be, the Commission would be well aware of the draconian effects exclusivity can have on overshadowed stations. Attached hereto as Exhibit 3 is the Emergency Petition for Waiver that UHF Station WAYK, Melbourne, Florida filed seeking relief from the action adding Melbourne to the hyphenated "Orlando - Daytona Beach - Melbourne - Cocoa" market. Essentially, this action deprived WAYK of the protection of the 35 Mile Rule, allowing Orlando television stations to obtain exclusivity against it. SBC submits that WAYK's waiver request illustrates, on a small scale, the type of market dislocations that will be widespread if the 35 Mile Rule is repealed or relaxed.

27. From the point of view of a broadcast station, one program is only an effective substitute for another if it will generate a reasonable audience and therefore produce comparable advertising revenues. The primary determinants of the net revenue available from a program are the cost of the program and the program's ratings. Even a cursory analysis of the audience ratings of various syndicated programs shows huge gaps between a limited number of "hit" programs versus a large number of available programs. Cost variables are even wider.

28. A list of recent ratings for the top fifteen syndicated shows is appended hereto as Exhibit 4. Review of this list illustrates the vast differences a station would face if its first choice program were preempted by an overshadowing station exercising exclusivity rights, and it was forced to settle for carrying a second choice program. Simple calculations show that if a station were forced to drop the number one program "Wheel of Fortune" in favor of number two "Jeopardy", it would suffer an average ratings drop of 19%.

29. In fact, overshadowed stations typically face competition not from one station, but from a number of stations in overshadowing markets. These stations have numerous slots in every broadcast day that must be filled with syndicated programs. Therefore, if the 35 Mile Rule were eliminated, overshadowed stations would likely never have the option of taking on a second choice program, but would be relegated at best to a tenth, twentieth, or even lesser choice. If our

overshadowed station lost "Wheel Of Fortune" and were forced to accept, instead, the number fifteen program "Fame", it would suffer a drop of more than 71% in ratings[10].

B. MAJOR MARKET STATIONS WILL SEEK ADDITIONAL EXCLUSIVITY AGAINST OVERSHADOWED STATIONS

30. The Notice opines (at paragraph 62.a) that "competitive market forces will better protect the public interest in territorial exclusivity than will a rigid rule defining the limits of exclusivity." Stations would not "bargain for any more exclusivity than they believe is worthwhile. Nor would they be expected to bargain for programs that they do not intend to use."

31. This idealized condition may exist in a textbook, but not in the real world. Empirical observation shows that when available, exclusivity is the television industry norm rather than the exception, and no significant increase in price appears to be paid for the right to exclusivity. The Notice's simplistic economic theory does not describe the reality of this market, because it ignores significant market imperfections.

32. Stations with access to large audiences have an inherent advantage over others in the programming market. They

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[10]This illustration is overly optimistic. Overshadowed stations are not likely to have any of the top 15 programs available to them, but will have to accept whatever scraps the larger market stations leave on the table. See para. 35, below. Accordingly, even the illustrative 71% decrease in ratings understates lost ratings.

can charge more for advertising and therefore outbid smaller stations for programming. Further, larger stations in overshadowing markets have both strong economic incentives to bargain for exclusivity and the power to obtain it, since the benefits to a station from obtaining a larger audience tend to be proportionately greater than the gain in audience[11]. Moreover, the value of exclusivity to an overshadowing station is generally greater than the value of the programming itself to the overshadowed station, due to the significant differences in audience potential[12]. Therefore the overshadowing station's financial ability to pay for exclusivity will exceed the overshadowed station's financial ability to compete for programming. Consequently, large market stations generally bargain for exclusivity wherever they can get it.

33. This situation is aggravated by the importance to program suppliers of access to the large audiences in overshadowing markets, which strongly motivates them to accede to large market stations' demands for exclusivity. Audience size is important because program suppliers increasingly earn a substantial portion of their income from the sale of barter advertising carried on the programs they license for

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[11]A discussion of how large market stations can translate a given gain in audience into more advertising revenue than a small market station is contained in the Statement of Linda DesMarais appended hereto as Exhibit 5. See also Exhibit 1.

[12]To illustrate the disparity, weekly fees for a popular show in Tampa were reported to be $10,000 per week, while in the neighboring overshadowed Sarasota market the fees were only $750.

exhibition. See Exhibit 5. Even if the supplier does not retain advertising time, access to larger audiences allows a station to generate greater revenues and therefore be able to dedicate more resources to program acquisition than stations with smaller audience potential[13].

34. In fact, despite the 35 Mile Rule, major market stations have acted to discourage program suppliers from providing programs even to overshadowed stations licensed to communities beyond the 35-mile limit. As related in the statement of Linda DesMarais appended hereto as Exhibit 5, each significant purchase of non-network programming she has made on behalf of Station WWSB has required invocation of the non-network territorial exclusivity rule. Even with the rule, program suppliers have often sought prior approval of proposed sales to WWSB from stations in the Tampa market.

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[13]The ability of major market stations to outbid small market stations is not simply their ability to pay more money for programming. As noted in the "Survey of Factors Affecting Production and Distribution of Non-Network Programs", appended hereto as Exhibit 6, access to the top fifty television markets is critical to the financial success of a syndicated program. These 50 markets account for 66.75 percent of all television households in the United States. Many of the television broadcasters in these markets can offer syndicators access to several top 50 markets in a single multi-station transaction. For example, in 1986 Station WNYW, New York, was co-owned with television stations in Los Angeles, Chicago, Boston, Dallas, Washington and Houston. A single multi-station sale to this group owner would give a syndicator access to television markets number one, two, three, six, eight, nine and ten. This type of large market access is particularly important where a syndicator retains the right to sell some of the advertising time within its program. No UHF broadcaster in an overshadowed market has the type of market power a top fifty market television broadcaster has over program distributors.

35. The present Tampa/Sarasota situation is illustrative of overshadowed markets in another respect. Exhibit 7 appended hereto lists the syndicated programs available or purchased in the Tampa and Sarasota markets. Two stations in the Tampa market, WTOG and WTSP-TV, are actually licensed to St. Petersburg, a community within 35 miles of Sarasota. These stations purchase exclusivity against WWSB in <u>virtually every program purchase</u>, and the most attractive programs they have purchased are therefore all unavailable to a Sarastota station[14]. If the 35 Mile Rule were repealed, similar purchases of exclusivity by the Tampa licensees would potentially foreclose an additional 68 programs from exhibition on WWSB, including seven of the syndicated programs WWSB is currently licensed to exhibit. As a result, WWSB would not be able to purchase any of the top rated programs available today. The impact on WWSB would be devastating.

36. In the absence of the 35 Mile Rule, the inherent inequality between major market and smaller market television stations will ineluctably lead to a pattern of dominance by stations in larger markets in the bidding competition for programming. The financial viability of the smaller market television station would obviously be severely affected if its programming options were to become as constrained as discussed

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[14]The sole exception to this statement is the Donahue program which remains available to WWSB under a grandfathered contract. Were this contract to lapse, exclusivity arrangements with St. Petersburg stations would likely bar WWSB from reacquiring the Donahue show.

above. Therefore, the Commission's optimism concerning the ability of overshadowed stations to obtain adequate substitute programming in the face of overshadowing exclusivity is wholly unwarranted.

C. <u>REPEAL OF THE 35 MILE RULE WOULD UNDERMINE THE LOCAL SERVICE OBJECTIVES OF SECTION 307(b) OF THE COMMUNICATIONS ACT OF 1934</u>

37. An essential element of the philosophy underlying Section 307(b) of the Communications Act is the desirability of local broadcast service, <u>i.e.</u>, broadcast programming directed to local problems, interests and needs. An important element of this programming is local news and public affairs programming. In fact, this local programming was once considered so important that the Commission monitored the amounts of local programming provided by stations at renewal time. Even in this era of deregulation, local programming is essential to evaluating a broadcast licensee's renewal expectancy. Indeed stations are required to keep evidence of their programs treating community issues in their public files for evaluation by the Commission and the public.

38. Local news and public affairs programming is produced with funds that come out of a station's overall programming budget. To the extent that the station must spend additional funds on entertainment programming, the amount available for news and public affairs programs is diminished. Also, to the extent that a station's entertainment programming

does not generate sufficiently large audiences and revenues to support the station's programming budget, funds available for local news and public affairs are diminished.

39. SBC submits that the programs of television stations licensed to communities more than thirty-five miles away would not provide any meaningful substitute news or public affairs programs to a local community. To illustrate this principle, Exhibit 8 hereto is a recent survey of Sarasota County news broadcast on the Tampa/St. Petersburg network affiliate stations[15]. Overall, the total percentage of Sarasota County news broadcast by the Tampa network affiliates during this period was 0.84% of their local news programming. During this same period, Station WWSB devoted roughly 70% of its local newscasts to coverage of its market, Sarasota/Bradenton/Venice.

40. Without the 35 Mile Rule, stations in overshadowed markets face the very real possibility that, no matter how efficient they are as competitors, they will be driven into serious financial difficulty. The efficient competitive response required of an overshadowed station competing with a overshadowing station would be to invest and grow into the other's larger market. That avenue, however, is not open to broadcast stations under current regulation. Therefore, if the 35 Mile Rule were not in place, the only option for an affected station would be to cut back in news and public affairs

[15]As previously noted, one of these affiliates is in fact licensed to St. Petersburg, which is within 35 miles of Sarasota.